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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,475	10/01/2003	Donald E. Weder	8403.970	7525
30589	7590	08/11/2004	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			PALO, FRANCIS T	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/676,475	Applicant(s) WEBER ET AL. <span style="float: right;">2</span>	
	Examiner Francis T. Palo	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: <u>Final Rejection</u> .                             |

## **DETAILED ACTION**

### ***Terminal Disclaimer***

The terminal disclaimer filed on 5/19/04 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of US Patent 6,477,804 has been reviewed and is accepted.

The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-10** are rejected under 35 U.S.C. 103(a),  
as being unpatentable over Newport (AU 42319/78) 1979, in view of  
Landau (US 5,235,782) 1993 and Evans (US 3,512,700) 1968.

Regarding **independent claim-1**:

Newport depicts a plant package shaped as cited and discloses a flattened condition (sealing the edges of two flat sheets of polythene [page-3, beginning at line-3]) as cited.

*Newport is silent as to the convexly curved gusseted lower end as cited in the independent claim.*

Landau '782 teaches a potted plant sleeve having a tapered sidewall and frustoconical shape as cited, for covering a potted plant (Title); Landau is specifically relied upon for the teaching of a gusseted lower end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the lower end of Newport as taught by Landau, for the well-known advantages of that feature.

*Newport as modified, lacks the convex lower end as cited in the instant independent claim.*

Evans '700 discloses a flexible bag construction for packaging rounded items (read as; capable of packaging potted plants),[see the Abstract and column-2, beginning at line-4].

The bag of Evans (heretofore read as; a sleeve) is depicted in Figures 4 and 5 as having a flattened condition, and is capable of having an open condition about a pot as cited in the instant claim.

Evans is specifically relied upon for the teaching of a convexly curved lower end having a gusset portion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have further modified the lower end of Newport as taught by Evans, as further such modification is merely an alternate equivalent expansion means performing the same intended function of accommodating a pot bottom in the base of a sleeve.

Regarding dependent **claim-2**:

The discussion above regarding claim-1 is relied upon.

Newport as modified is capable of the "substantial conformation" as cited in the instant claim.

Regarding **claims 3 and 8**:

The discussion above regarding claim-1 is relied upon.

The formation of a "decorative cover" as cited is a broad subjective limitation.

Newport recites; "the lower part of the sleeve is printed with trade mark, message or other material".

Regarding **claim-4**:

The discussion above regarding claim-1 is relied upon.

The sleeve of Newport in contact with the pot contained therein, is read as "connected to the pot", as cited in the instant claim.

Regarding **claim-5**:

The discussion above regarding claim-1 is relied upon.

Newport recites in claim-1, "a sleeve of thin flexible sheet material", read as; polymeric film construction, as cited in the instant claim.

Regarding **claim-6**:

The discussion above regarding claim-1 is relied upon.

Newport recites structure in claim-2, readable as a detachable upper portion, as cited in the instant claim.

Regarding **claim-7**:

The discussion above regarding claim-1 is relied upon.

"a sleeve of thin flexible material", as recited in claim-1 of Newport, is capable of the thickness cited in the instant claim.

Regarding **claim-9**:

The discussion above regarding claim-1 is relied upon.

Newport as modified (by Landau, Figure-2), renders obvious a curved upper end, as cited in the instant claim.

Regarding **claim-10**:

The discussion above regarding claim-1 is relied upon.

Newport recites "perforations" and ventilation holes" in the claims; features readable as "at least one hole for permitting drainage", as cited in the instant claim.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed,

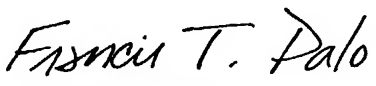
and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on T-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER

  
Francis T. Palo  
Examiner  
Art Unit 3644